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In the Supreme Court of the United States

OCTOBER TERM, 1959

WILLIAM LANGFORD HODGE AND ROBERT BRANCH,
Petitioners

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

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Solicitor General,

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UNITED STATES OF AMERICA

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 10) is reported at 271 F. 2d 52.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 1959 (Pet. 11). A petition for rehearing was denied on November 28, 1959 (Pet. 12). The peti-

tion for a writ of certiorari was filed on December 18, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the allowance of 30 minutes for argument before the jury, when 40 minutes had been requested, constituted an abuse of discretion by the trial judge.

STATEMENT

Petitioners seek review of the judgment of the Court of Appeals for the Fifth Circuit (Pet. 11) affirming a conviction in the United States District Court for the Northern District of Florida, after a trial by jury, for conspiracy to violate the laws involving distilled spirits, and for sale of such spirits, in violation of 18 U.S.C. 371 and 26 U.S.C. 5008(b)(1) and 5642 (R. 139-140, 142-143). Concurrent sentences of 3 years were imposed upon each of the two counts (R. 140, 142-143).

The entire trial took place on February 12, 1959, including the impaneling of the jury, opening statements, taking of testimony, and verdict (R. 4-7). Two government agents testified to the same facts, *i.e.*, the purchases of non-tax-paid spirits from petitioners on two separate occasions, both petitioners participating in the sales (R. 13-64).

The informer who had brought the agents together with petitioners became a witness against the government, testifying that petitioner Hodge, although present, had not participated in the sales (R. 67-93). Petitioner Hodge testified to substantially the same version as the informer (R. 102-114), and petitioner Branch

testified to his own exclusive guilt in making the sales (R. 95-102).

ARGUMENT

At the time for closing argument, the following colloquy occurred (R. 119):

> THE COURT: All right, I'll give my usual charge including that on conspiracy. How long will you want to argue?
>
> MR. ATKINSON: No more than forty minutes for our side.
>
> THE COURT: Now your side can't have more than thirty minutes. Let's get through with it today.
>
> MR. ATKINSON: All right, sir.
>
> THE COURT: Thirty minutes. Court will be in recess for about five minutes.

Petitioners' counsel obviously felt no important need for 40 minutes of argument rather than the 30 minutes allowed. They agreed to the lesser time and objected only on appeal. The case was a simple one and the only real conflict was as to whether petitioner Hodge was a bystander or a participant. Thirty minutes for argument was therefore ample.

"It is well settled that the limitation of time for arguments of counsel is within the sound discretion of the trial court". *Capriola* v. *United States*, 61 F. 2d 5, 6, 11 (C.A. 7), certiorari denied, *sub nom. Walsh* v. *United States*, 287 U.S. 671 (59 defendants, 2 hours' time); *Samuels* v. *United States*, 232 Fed. 536, 538, 543-544 (C.A. 8), (41 witnesses, 30 minutes' time); *Wagman* v. *United States*, 269 Fed. 568, 573-574 (C.A. 6), certiorari denied, 255 U.S. 572 (liquor transportation,

22 minutes); *Cases* v. *United States*, 131 F. 2d 916, 925 (C.A. 1), certiorari denied, *sub nom. Velazquez* v. *United States*, 319 U.S. 770 (transporting and receiving fire arms, 20 minutes).[1]

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1960.

[1] *Rossi* v. *United States*, 9 F. 2d 362 (C.A. 8), cited by petitioners, is clearly inapposite. There, only 15 minutes was allowed for argument in a trial involving 13 witnesses. In *Kolp* v. *United States*, 2 F. 2d 953 (C.A. 6), in which 15 minutes was allowed for argument, defendant's version of the sale of liquor was supported by "a number of witnesses, largely his employes or friends", and the case involved four officers as purchasers, two of whom testified; and a critical missing witness. Questions of aiding and abetting and entrapment also added complexity. In *York* v. *United States*, 299 Fed. 778 (C.A. 6), likewise cited by petitioners, there was a limitation to 20 minutes in a case involving 233 pages of transcript, "over the protest of counsel, both before the argument and at the end of exactly 20 minutes, and the refusal to extend the time to enable him fairly to cover the points he wished to urge" (299 Fed. at 779).

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